

Testimony of Benjamin Scott,  
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Good morning, Mr. Chairman and members of the Committee. I am pleased to appear before you to discuss spectrum policy because I want to congratulate you personally on the success of the spectrum policies you have adopted. By granting the FCC auction authority in 1993, you made possible the rapid deployment of new wireless communication services to the American people. It is with a great deal of pride that I can report to you today that PrimeCo Personal Communications, which submitted winning bids totaling more than \$1.1 billion for 11 MTAs, is now providing sixteen American cities the most modern wireless commercial service in the world less than two years after its licenses were issued. With other PCS systems coming on line every day, the benefits of the communications policy championed by this committee are being realized. Wireless consumers now have more service providers from which to choose, access to a greater range of service offerings and products, and improved service quality and lower prices as a result of the new competition your policies have introduced.

These new policies include the use of spectrum auctions for the assignment of commercial mobile wireless licenses. The success of these auctions lies not in the \$20 billion that has been bid for the licenses, but in the rapid and efficient assignment of the licenses to firms placing the highest value on their use. While the money these auctions have earned the Treasury is satisfying from a budget balancing point of view, the real achievement of the auctions has been to avoid the delay in making this assignment, a delay

which, in the cellular context, has been estimated to have cost the economy \$85 billion. Notwithstanding this important observation, many policy makers now mistake an important communications policy for a fiscal tool.

All spectrum is a public resource and we should allocate spectrum to maximize the public interest, not public revenue. Auctions have proven to be an efficient assignment mechanism for commercial mobile service licenses and, as part of a coherent communications policy, all new spectrum for commercial mobile service should be licensed by auction. To serve the public interest, the FCC should continue to allocate spectrum as the Communication Act requires for uses that are consistent with our international treaties and that take advantage of the natural properties of individual spectrum bands. Within these allocations, however, I believe that a degree of spectrum flexibility will serve the public interest by allowing companies to tailor their services to meet the needs of their customers. I also believe that, while competitive bidding has proven to be a highly efficient means of assigning commercial licenses, it is nonetheless appropriate for the FCC to direct spectrum to public safety, private radio, and other uses historically excluded from auctions.

There is no doubt that competitive bidding is the best means of assigning licenses for commercial mobile services. First, the auctions make license assignments more quickly than administrative hearings and lotteries. A three-year delay brought on by comparative hearings could destroy as much as a quarter of the value of a license. Second, auctions result in licenses being assigned to those firms who value them the most. From the point of view of the country as a whole, this means that it is more likely that the spectrum will be put to its highest valued use. Third, auctions are less costly than lotteries and compara-

tive hearings, each of which typically initiates litigious consequences wasteful of the limited resources available to the FCC. And, of course, the proceeds of the auction go to the Treasury and not to some individual or firm who happens to have won a lottery.

Ironically, however, the success of the spectrum auctions in raising \$20 billion for the U.S. Treasury now threatens the undoing of this landmark communications policy. Mae West once said that too much of a good thing is wonderful, and the wonderful wealth produced by the auctions has led some to confuse a communications policy with a fiscal policy. The primary purpose of the spectrum auctions is to assign wireless licenses efficiently with the secondary advantage of generating revenue for the U.S. Treasury. In a disturbing trend, the order of priority is being reversed by some who would convert the auctions from an instrument of communications policy for the efficient allocation of wireless licenses into a tool for revenue enhancement.

A good example of this conflation of purposes is the forthcoming auction of spectrum for a use called Wireless Communications Service or WCS. Last year, as part of a deficit reduction plan, Congress ordered the FCC to auction spectrum recently made available in the 2.3 GHz band. Under the terms of the law, the FCC had to establish rules for use of the spectrum and hold the auction of the frequencies by this spring so the proceeds could be counted in the current fiscal year. Clearly, fiscal concerns and not communications policy drove this process. In my view, using spectrum auctions in this way is bad communications policy that harms the public interest.

Congress has recognized that certain uses of radio frequencies, like fire, police, emergency, private radio communications, and other uses touching upon the public interest, have a benefit to the public as a whole and therefore authorizations for such use are

exempt from auctions. However, treating auctions as a fiscal device encourages the FCC to allocate as much of the available spectrum as possible to commercial uses, which can be auctioned, rather than to public uses, which cannot. Such a policy has serious consequences to public welfare since it tends to severely limit spectrum uses unsuitable for assignment by auction.

In addition, the FCC's proposed flexible use of the WCS band points to a still larger problem for communications policy. Traditionally, the FCC proposes an allocation of spectrum to a use for which there is evidence of a public need. Following comments to establish a public record that probes interference issues and other matters affecting the use of the spectrum, the FCC allocates frequencies for a specific use and then assigns licenses for the exploitation of the band.

Recently, several "White Papers" from various sources have proposed that auctions be used not only for license assignment, but also as a mechanism for making the frequency allocations themselves. This approach to spectrum management is wrong because it would have the government abdicate its responsibility to consider the public interest as it allocates spectrum for specific uses. The allocation of radio spectrum is a fundamental responsibility of the FCC and arises from lessons learned since the early days of radio. At that time, any entrepreneur could make use of radio frequencies for any purpose without regard to interference or prior use of the band. The result of this "market-driven" process was chaos so widespread as to make wireless communications useless. Congress recognized in this state of affairs an injury to the public interest and passed the Radio Act of 1927 to restore order to the use of the nation's radio waves. When the FCC was formed following passage of the Communications Act of 1934, Congress declared one of its pri-

mary duties to be the allocation of spectrum to uses consistent with the public interest, United States' treaty obligations, and the technical characteristics of the spectrum in question. For the FCC to abandon this responsibility to competitive bidding under the seductive guise of yielding to market forces will return one of this country's fastest growing industries to the anarchy that reigned in the first decades of this century.

I doubt that many firms would bid aggressively for spectrum for which no use has been determined. In fact, I believe a critical examination of the auction successes to date will show that companies and their financial supporters were willing to invest in the market precisely because the bands up for bid had been allocated by the FCC to well defined services consistent with worldwide frequency allocations. As a result, equipment manufacturers could invest in the research and development for these wireless services confident that a global market was available; consumers could enjoy the lower prices that global manufacturing volumes made possible; and investors found the level of risk and uncertainty acceptable because the FCC's rules for operations in these bands gave them confidence in the stability of the evolving wireless marketplace. None of these factors is present in a regulatory system that abandons spectrum allocation to competitive bidding. In that environment, manufacturers lack vital information on the size of their potential market, consumers lack the price benefits of volume production, and investors lack predictability.

I wish to close by thanking you, Mr. Chairman, for your continued interest in wireless communications issues. It is my understanding that you will be holding hearings on issues affecting the industry such as antenna siting, and I commend you for your leadership in this area.